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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte STEVE TRONG

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Appeal 2009-006867
Application 09/515,809
Technology Center 2400

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Decided: January 5, 2010

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Before MAHSHID D. SAADAT, ROBERT E. NAPPI,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 15-26. Claims 1-14 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's invention relates to data communications and firewall applications running within a router (Spec. 1). According to Appellant, preserving the connection data structure of a firewall application running within a router is needed so that the reliability of the connection is ensured (Spec. 6). Claim 15, which is illustrative of the claimed invention, reads as follows:

> 15.   A method for storing data relating to a connection through a routing system in a checkpoint server comprising:
>
> receiving connection information for a connection from a module in a routing system wherein said connection information is information needed by a module to support said connection;
>
> determining a connection identifier for said connection responsive to receiving said connection information;
>
> embedding said connection identifier into said connection information; and
>
> storing said connection information with said connection identifier into a space in said memory.

The Examiner relies on the following prior art references:

Westberg	US 6,041,054	Mar. 21, 2000 (filed Sep. 24, 1997)
Jade	US 6,061,797	May 9, 2000 (filed Aug. 12, 1998)

The rejections as presented by the Examiner are as follows:

Claims 15-17, 19-21, and 23-25 stand rejected under 35 U.S.C.
§ 102(e) as being anticipated by Westberg.

Claims 18, 22, and 26 stand rejected under 35 U.S.C. § 103(a) as
being unpatentable over Westberg and Jade.

Rather than repeat the arguments of Appellant or the Examiner, we
refer to the Briefs and the Answer for their respective details. Only those
arguments actually made by Appellant have been considered in this decision.
Arguments that Appellant did not make in the Briefs have not been
considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

Appellant argues that Westberg does not anticipate Appellant's claims
because the connection information in Westberg is in the form of an
identifier inside a packet instead of the information needed by a module to
support the connection (App. Br. 7). Appellant further contends that the
connection identifier in Westberg replaces connection information, and is
not embedded into it, as required by claim 15 (*id.*). The Examiner responds
that Westberg's AAL2 minicell header includes the connection ID
embedded therein, which is ultimately included in the packet (Ans. 4). The
Examiner asserts that the claim term "module" is defined on page 16 of
Appellant's disclosure as any application of any network layer, which means
that any application of any receiver would need the connection information
to maintain the connection (*id.*). With respect to the obviousness rejection
over Westberg in view of Jade, Appellant again argues that Westberg does
not teach or suggest the claimed features mentioned above, while Jade does
not cure the alleged deficiencies of Westberg (App. Br. 9).

Thus, Appellant's arguments present the following issue:

Has Appellant shown that the Examiner erred in finding that Westberg teaches the connection information that is needed by a module to support the connection and the connection identifier that is embedded into the connection information?

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

1.   Appellant's Specification describes the "module" as follows:

> As defined herein, a module may be any application of any layer that a particular connection may utilize in a particular session. As such, modules running in any layer of a particular session may be checkpointed, such as the layer 4 and layer 7 applications described above in the prior art section.

(Spec. 16:7-10.)

2.   Westberg relates to improving bandwidth utilization and transmission efficiency associated with the point-to-point transportation of internet protocol (IP) data packets in a network environment by employing asynchronous transfer mode (ATM) adaption layer two (AAL2) minicells as a bearer. (Abstract.)

3.   Westberg discloses a method for transporting an internet protocol data packet over an AAL2 connection wherein the internet protocol (IP) data packet includes a header portion. If the data associated with a session context/connection identifier data field in a header portion of a first IP data packet has not been previously stored in a look-up table, the method inserts the full IP data packet header into a first AAL2 minicell. (Col. 4, ll. 15-26.)

4.   Westberg further discloses that, at the receiving point, the data associated with the session context/connection identifier data field is stored in the look-up table in accordance with the unused address in the data field associated with the AAL2. (Col. 4, ll. 30-34.)

5.   As depicted in Figure 8, Westberg describes the data fields included in the header 805, such as a session context or connection identifier (ID) 850. (Col. 6, ll. 4-8.)

6.   Westberg teaches that, if the source/destination/connection/flow information has not been previously stored in the look-up table, the compression algorithm identifies an unused entry in the look-up table and inserts the address of the unused look-up table entry in the CID data field 304 of the corresponding AAL2 minicell. A full header containing the source/destination/connection/flow information associated with the session context/connection ID 850 is inserted into the payload of the AAL2 minicell and then transferred to the receiving point. (Col. 6, l. 63 – col. 7, l. 8.)

7.   Westberg further discloses that the decompression algorithm stores the previously unstored source/destination/connection/flow information in the lookup table based on the address that the compression algorithm stored in the CID field 304. By doing so, the transmitted IP/PPP data packets associated with the same session/connection need only carry the look-up table address in the CID field 304 of the corresponding AAL2 minicell header, rather than the source/destination/connection/flow information. (Col. 7, ll. 10-18.)

PRINCIPLES OF LAW

1.   Anticipation

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992)); *see also In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. of Am. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

It is well settled that, if a prior art device inherently possesses the capability of functioning in the manner claimed, anticipation exists regardless of whether there was recognition that it could be used to perform the claimed function. *See, e.g., In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

2.   Obviousness

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The initial burden of establishing reasons for unpatentability rests on the Examiner. *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

The Examiner can satisfy this burden by showing "'some articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *Kahn*, 441 F.3d at 988).

ANALYSIS

§ 102 Rejection over Westberg

Appellant's arguments that the Examiner erred in rejecting claim 15 as being anticipated by Westberg are not persuasive. The Examiner's position is that Westberg embeds the CID, or the connection ID, into the connection information, wherein the CID is embedded into the AAL2 minicell header while the source/destination/connection/flow information is embedded in the full header (Ans. 4). The Examiner further finds that the full header, which is embedded in the packet, is sent to establish a connection with a receiver (*id.*). The Examiner concludes that the connection information is in the received packet and is needed to support said connection (*id.*).

With respect to the claimed step of receiving connection information from a module in a routing system, the Examiner refers to page 16 of Appellant's Specification, stating that a module may be any application of any network layer in the system (*id.*). The Examiner concludes that sending the connection information to the receiving point in Westberg indicates receiving such information from a module, since that application of the receiver would need the connection information for maintaining the connection (Ans. 4-5).

Based on a review of how Westberg uses the AAL2 minicell as a bearer (FF 2) and how the full IP data packet header is inserted into the minicell (FF 3), we agree with the Examiner and find that Appellant's

assertion that the Examiner erred in rejecting claim 15 as being anticipated by Westberg is not persuasive. We further find that Westberg stores the connection identifier in the look-up table based on unused addresses in the data field associated with the minicell included in the header (FFs 4-5). The header containing the connection information associated with the connection identifier is inserted into the minicell and sent to the receiving point (FF 6). This look-up table address in the connection identifier field, which is carried in the packet, is needed by the process to support the connection (FF 7).

While Westberg uses the source destination address, the source/destination/connection/flow information associated with a session connection ID is inserted into a minicell, or sent to the receiving point by the application (FF 6). By carrying the look-up table address where the source/destination/connection/flow information is stored, the packet in Westberg needs only carry the look-up table address in the connection ID field (FF 7). Therefore, contrary to Appellant's contention (App. Br. 7; Reply Br. 5), Westberg meets the claimed connection information that is the information needed by a module in a routing system to support the connection. In that regard, as stated by the Examiner (Ans. 4-5), the claimed module is described in Appellant's disclosure as any application of any layer, which reads on the process the data transfer of Westberg.

Further, contrary to Appellant's argument (App. Br. 7) that the connection identifier of Westberg replaces the connection information, as stated by the Examiner (Ans. 4), the minicell header containing the connection information is inserted in the packet and includes the connection identifier stored in the look-up table (FFs 6-7). In other words, the connection identifier is embedded into the header that carries all the

connection information in the packet to the receiving point in order to support the connection.

With respect to the remaining claims that are rejected as anticipated by Westberg, Appellant either repeats the claim recitations discussed above (App. Br. 7-8), or presents no separate arguments (App. Br. 8). In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). Therefore, the rejection of claims 15-17, 19-21, and 23-25 under 35 U.S.C. § 102(e) is sustained.

§ 103 Rejection over Westberg and Jade

Similarly, Appellant provides no separate arguments regarding this rejection and relies on the same arguments made with respect to claim 15. Appellant further asserts that Jade does not cure the alleged deficiencies of Westberg (App. Br. 8-9). Accordingly, we will sustain the 35 U.S.C. § 103 rejection of claims 8, 22, and 26 over Westberg and Jade.

CONCLUSION

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in finding that Westberg teaches the connection information that is needed by a module to support the connection and the connection identifier that is embedded into the connection information.

ORDER

The decision of the Examiner rejecting claims 15-26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc

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